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ABSTRACT

The policy of the Department of Education's Office for Civil Rights concerning the education of limited-English-proficient (LEP) students in elementary and secondary schools is outlined, based on the requirements of Title VI of the Civil Rights Act of 1964. Title VI protects students who are limited in their English language skills to the extent that they are unable to participate in or benefit from regular or special education instructional programs. A 1970 memorandum to school districts clarifying school districts' responsibility, compliance procedures published in 1985, and a 1991 policy update are explained, and a number of compliance issues are detailed, concerning whether (1) a district has identified all students eligible for special language assistance programs, (2) a district can ensure placement of all eligible students, (3) all eligible students are being served, (4) a district has attempted to modify an inadequate program, (5) a district ensures LEP students are not mis-identified as needing special education, and (6) a school district ensures LEP parents are provided with appropriate and sufficient information. (MSE)

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The Provision of an Equal Education Opportunity to Limited-English Proficient Students

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THE PROVISION OF AN EQUAL EDUCATION OPPORTUNITY TO LIMITED-ENGLISH PROFICIENT STUDENTS

U.S. Department of Education
Office for Civil Rights
Washington, D.C. 20202-1328

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INTRODUCTION

In recent years, there has been a surge of immigrants with limited English language skills to the United States. In addition, many children of immigrant parents and children who are Native American and Alaskan Native enter school with limited ability to learn in English. The U.S. Department of Education (ED) estimates that there are 2.4 million national-origin minority school children who have limited English language skills which affect their ability to participate effectively in education programs and achieve high academic standards.

The insufficient English language proficiency of these students often results in classroom failure and school drop-out. Many students either are ill-equipped for higher education or lack the required skills to obtain productive employment. To resolve these problems, students must have an equal opportunity to benefit from education programs offered by their school districts.

TITLE VI REQUIREMENTS

The Office for Civil Rights (OCR) within ED has responsibility for enforcing Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin in programs and activities that receive federal financial assistance.

Schools, colleges and other institutions receiving federal financial assistance cannot, on the basis of race, color, or national orgin:

- provide services, financial aid, or other benefits that are different or provide them in a different manner;
- restrict an individual's enjoyment of an advantage or privilege enjoyed by others;
- deny an individual the right to participate in federally assisted programs; and
- defeat or substantially impair the objectives of federally assisted programs.

These Title VI regulatory requirements have been interpreted to prohibit denial of equal access to education because of a student's limited proficiency in English. Title VI protects students who are so limited in their English language skills that they are unable to participate in or benefit from regular or special education instructional programs.

OCR TITLE VI POLICY ON LANGUAGE MINORITY STUDENTS

During the late 1960s, OCR staff became aware that many school districts made little or no provision for students who were unable to understand English, even though there were substantial numbers of these students enrolled in their districts.

In an effort to resolve this problem, in 1970, OCR issued a memorandum to school districts titled the *Identification of Discrimination and Denial of Services on the Basis of National Origin*. The purpose of the memorandum was to clarify Title VI requirements concerning school districts' responsibility to provide equal education opportunity to language-minority students.

The 1970 memorandum stated, in part:

> Where the inability to speak and understand the English language excludes national origin minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.

Although the memorandum requires school districts to take affirmative steps, it does not prescribe the content of these steps. However, it explains that Title VI is violated if:

- students are excluded from effective participation in school because of their inability to speak and understand the language of instruction;

- national-origin minority students are misassigned to classes for the mentally retarded because of their lack of English skills;

- programs for students whose English is less than proficient are not designed to teach them English as soon as possible, or if these programs operate as a dead-end track; or

- parents whose English is limited do not receive school notices and other information in a language they can understand.

In the 1974 *Lau v. Nichols* case, the U.S. Supreme Court upheld the 1970 memorandum as a valid interpretation of the requirements of Title VI. The Supreme Court stated that, "[T]here is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education."

In 1985, OCR issued "The Office for Civil Rights' Title VI Language Minority Compliance Procedures," which outlines OCR policy with regard to the education of language-minority students and Title VI compliance standards. In 1991, OCR

issued an update, "Policy Update on Schools' Obligations Toward National Origin Minority Students with Limited-English Proficiency (LEP students)."

The 1970 memorandum, and the 1985 and 1991 documents, explain the relevant legal standards for OCR policy concerning discrimination on the basis of national origin in the provision of education services to LEP students at the elementary and secondary level.

TITLE VI COMPLIANCE ISSUES

When investigating complaints and conducting compliance reviews of school districts regarding equal education opportunity for national-origin minority students who are limited English proficient (LEP), OCR considers two general issue areas:

- whether there is a need for the district to provide a special language service program (an alternative language program) to meet the education needs of all language-minority students; and

- whether the district's alternative language program is likely to be effective in meeting the education needs of its language-minority students.

The question of need for an alternative language program is resolved by determining whether LEP students are able to participate effectively in the regular instructional program. When they are not, the school district must provide an alternative program. In cases where the number of these students is small, the alternative program may be informal.

Educators have not reached consensus about the most effective way to meet the education needs of LEP students. Many factors affect the types of education programs that school districts may offer, including the number of students or the variety of languages they speak.

Consequently, OCR allows school districts broad discretion concerning how to ensure equal education opportunity for LEP students. OCR does not prescribe a specific intervention strategy or type of program that a school district must adopt to serve LEP students, nor does OCR require school districts to teach students in their primary language. Educational approaches that are recognized as sound by some experts in the field may reasonably be expected to ensure the effective participation of LEP students in the total education program. School districts have the flexibility to decide on the education approaches that will meet the needs of their LEP students. Examples of such approaches include English as a Second Language, Transitional Bilingual Education, Developmental Bilingual Education, and Structured Immersion. The law requires effective instruction which leads to the timely acquisition of proficiency in English.

The following procedures should be used by school districts to ensure that their programs are serving LEP students effectively. Districts should:

- identify students who need assistance;
- develop a program which, in the view of experts in the field, has a reasonable chance for success;
- ensure that necessary staff, curricular materials, and facilities are in place and used properly;
- develop appropriate evaluation standards, including program exit criteria, for measuring the progress of students; and
- assess the success of the program and modify it where needed.

In considering whether there is a need for the district to provide a special language service outside of the regular program and whether the alternative program is likely to be effective, OCR examines some important issues listed below.

- **Whether a district has identified all LEP students who need special language assistance**

  A school district must be able to account for all of its LEP students. A small district may be able to do this informally. A large district, or one with a great number

of students whose first language or home language is not English, must have a formal system for objectively identifying students whose limited proficiency in speaking, reading, writing, or understanding English denies them the opportunity to meaningfully participate in the regular education environment and achieve high academic standards.

- **Whether a district can ensure the placement of LEP students in appropriate programs**

  Once a school district has identified students who need assistance, it must determine what types of assistance are warranted.

- **Whether all LEP students who need a special language assistance program are being provided such a program**

  A school district must ensure that all LEP students receive English-language development services.

- **Whether a district has taken steps to modify a program for LEP students when that program is not working**

  If the district's alternative language services program is not successful after a reasonable time period, the district must take steps to determine the cause of the program's failure and modify it accordingly.

- **Whether a district ensures that LEP students are not misidentified as students with disabilities because of their inability to speak and understand English**

  If national-origin minority students are not proficient in speaking, reading, writing, or understanding English, testing them in English may not demonstrate their ability or achievement skills. Steps must be taken so that LEP students are not assigned to special education classes because of their lack of English language proficiency, rather than because they have a disability. Such steps may include: assessing the student in his or her own language, making sure that accurate information regarding the student's language skills is taken into account in evaluating assessment results, and comparing results obtained when a part of the assessment is repeated in the student's first language.

- **Whether a school district ensures that parents who are not proficient in English are provided with appropriate and sufficient information about all school activities**

  School districts have a responsibility to notify effectively national-origin minority parents of school activities which are called to the attention of other parents. Notices, to be effective, may have to be provided in a language other than English.

CONCLUSION

In viewing a school district's compliance with Title VI and its implementing regulation regarding effective participation of language-minority students in the education program, OCR does not require schools to follow any particular educational approach. The test for legal adequacy is whether the adopted strategy works — or promises to work — on the basis of past practice or in the judgment of experts in the field.

OCR examines all available evidence to determine that the school district is using an effective strategy for its LEP students.

FOR ADDITIONAL INFORMATION

OCR is prepared to provide technical assistance to beneficiaries and educators in meeting the requirements of Title VI. Anyone wishing additional information regarding the provision of equal education opportunity to LEP students may contact the OCR enforcement office serving his or her state or territory, or call 1-800-421-3481.